IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1430 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHARMENDRA KISHORBHAI VIRANI - Applicant(s)
Versus
STATE OF GUJARAT THRO' & 4 - Respondent(s)

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Appearance :
MR TUSHAR L SHETH for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/08/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner – original complainant has prayed for an appropriate writ,

direction and/or order directing the respondent No.3 – District Superintendent of Police, Rajkot District to conduct fresh investigation in connection with I CR No.41 of 2006 registered at Lodhika Police Station. It is also further prayed for an appropriate writ, direction and/or order quashing and setting aside the order of the learned Additional Sessions Judge & Presiding Officer, Fast Track Court, Gondal passed below Exh.15 dated 3.7.2007 passed in Sessions Case No.7 of 2007 and to send the case back to the learned JMFC, Gondal for fresh report.

2. On 10th April, 2006, the petitioner filed a complaint / FIR against three accused viz. Nilesh Chauhan, Subhash Savaliya and Deven Marvadi at Lodhika Police Station being I CR No.41 of 2006 for the offences punishable under sections 306 and 114 of the Indian Penal Code alleging inter alia that his father was compelled to commit suicide by the accused persons. That pursuant to the said complaint,

charge-sheet came to be filed by the Investigating Agency on 18.11.2006 only against one Nilesh Chauhan and other two accused were not charge-sheeted. The said charge-sheet came to be accepted by the learned JMFC and thereafter, the case was committed to the learned Sessions Court. It is the case on behalf of the petitioner – original complainant that there is a suicide-note of the deceased wherein names and roles of the aforesaid three accused persons are mentioned. It is the case on behalf of the petitioner that the learned Sessions Judge summoned the complainant and witnesses for evidence on 30.4.2007 and after service of the summons, the petitioner came to know after verifying the case papers of the Court that other two accused i.e. Subhas Savaliya and Deven Marvadi are not made accused in the said case and they are not charge-sheeted and the same is done without filing any summary report known as A or B or C report. That the petitioner preferred an application under section 173(8) of the Criminal Procedure Code at Exh.15 before the

learned Additional Sessions Judge, Gondal and the same came to be rejected vide order dated 3.7.2007. As the other two co-accused i.e. Subhash Savaliya and Deven Marvadi are dropped and/or not charge-sheeted without filing any summary report according to the petitioner there is no proper investigation carried out and they are dropped and therefore, it is requested for an appropriate order directing the respondent No.3 – District Superintendent of Police, District Rajkot to further investigate the FIR / complaint being I CR No.41 of 2006. It is also submitted that even the order passed by the learned Additional Sessions Judge rejecting the application for further investigation under section 173(8) of the Criminal Procedure Code is also errorneous and illegal. Being aggrieved and dissatisfied with the order passed by the learned Additional Sessions Judge passed below Exh.15 in rejecting the application of the petitioner for further investigation under section 173(8) of the Criminal Procedure Code, petitioner has preferred present petition for an

appropriate order directing the respondent No. 3 - District Superintendent of Police, Rajkot District to investigate further in the complaint, the petitioner preferred present petition.

3. Shri T.L.Sheth, learned advocate appearing for the petitioner has vehemently submitted that the complaint was filed against three accused persons and even the names of all the three accused are there in the suicide note of the deceased, despite that only one accused is charge-sheeted and other co-accused are deopped / not charge-sheeted without submitting any summary report qua other two accused. It is submitted that the learned JMFC has committed grave error by accepting the charge-sheet only against one accused i.e. Nilesh Chauhan and has failed to appreciate that no summary report has been filed by the Investigating Agency against other two accused persons and the learned JMFC has accepted the charge-sheet mechanically. It is submitted that no opportunity of hearing has

been given by the learned JMFC before accepting the charge-sheet against only one accused – Nilesh Chauhan. It is submitted that names and roles of all the three accused persons are clearly mentioned in the suicide note of the deceased and the suicide note itself is sufficient evidence for convicting the accused. It is submitted that other two co-accused Subhash Savaliya and Devan Marvadi are dropped by the Investigating Officer with a malafide intention as they are having relations with the politicians and are very influential persons. It is submitted that therefore, the District Superintendent of Police should hold further inquiry and further investigate into the matter and when considering the above, application was given before the learned Additional Sessions Judge for further investigation under section 173(8) of the Criminal Procedure Code, the learned Additional Sessions Judge has materially erred in rejecting the said application mainly on the ground that it is given at belated stage. It is submitted by him that even the application

for further investigation under section 173(8) of the Criminal Procedure Code can be considered and granted at any stage of the trial to do the substantial justice. Shri Sheth, learned advocate appearing for the petitioner has heavily relied upon the decision of the Division Bench of this Court in case of ***Adesing Bavabhai & Others V/s. State of Gujarat*** reported in **1967 GLR 350** in support of his submission that the accused persons cannot be dropped without submitting the report as required under section 169 of the Criminal Procedure Code and therefore, it is requested to allow the present petition and grant the reliefs as prayed for.

4. On the other hand, Shri M.R. Mengde, learned APP relying upon the affidavit in reply, has opposed present petition, however, he has fairly conceded that no report has been submitted before the learned Magistrate at the time of dropping the other two accused persons. He is also not in a position to dispute and/or submit anything contrary to the decision of the

Division Bench of this Court in case of ***Adesing Bavabhai & Others*** (supra).

5. Heard the learned advocates appearing on behalf of the respective parties.

6. It is required to be noted that the complaint was filed against three accused persons viz. Nilesh Chauhan, Subhash Savaliya and Deven Marvadi being I CR No. 41 of 2006 registered at Lodhika Police Station for the offences under sections 306 & 114 of the Indian Penal Code. After investigation, the Investigating Officer submitted charge-sheet only against one accused person namely Nilesh Chauhan and dropped two other co-accused persons namely Subhash Savaliya and Deven Marvadi and unfortunately, the learned JMFC accepted the said charge-sheet qua only one accused i.e. Nilesh Chauhan. It is an admitted position that no summary report such as A or B or C summary report has been submitted qua other two accused persons i.e. Subhash Savaliya and Deven Marvadi. Identical question came to be

considered by the Division Bench of this Court in case of ***Adesing Bavabhai & Others*** (supra). In that case, at the end of investigation, the charge-sheet was filed as regards the accused No.1 only and no summary was asked for so far as other accused Nos.2 to 7 are concerned and considering the decision of the Full Bench of this Court in case of ***State V/s. Lakhamshi*** reported in **VII GLR 130**, the Division Bench criticized the action of the Investigating Officer in not charge-sheeting the other co-accused and/or not submitting any summary. The Division Bench in the aforesaid case considered para – 4 of decision in the case of Lakhamshi (supra) which reads as under :-

> ***"Now if upon an investigation under Chapter XIV it appears to the officer in charge of the police station or to the officer making the investigation that t here is not sufficient evidence of reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, says sec.169, release the accused, if in***

custody, on his executing a bond, to appear, if and when required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial. If on the other hand it appears to the officer in charge of the police-station, upon an investigation under Chapter XIV, that there is sufficient evidence or reasonable ground to justify the forwarding of the accused to a Magistrate, such officer is required under sec.170 to forward the accused to a Magistrate empowered to take cognizance of th offence to try the accused or commit him for trial or, if the offence is bailable, take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate. In either case, on the completion of the investigation; the officer in charge of the police station has to submit a report to the Magistrate under sec.173 in the prescribed form furnishing various details. Sub-sec. (1) of the at section provides that every investigation under the Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police station

shall :-

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report, in the form prescribed by the State Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given."

7. After considering the above para – 4 of the decision in case of ***Lakhamshi*** (supra), the Division Bench has further observed as under :-

"The final report of the completion of the investigation may, according to this Full Bench decision, take either of

the two forms. If, according to the Police Officer, the investigation discloses that an offence has been committed by the accused, he has to submit a charge-sheet against the accused persons. If, on the other hand, he comes to the conclusion that the investigation does not disclose any offence, he has to submit a report in another form prescribed by the State Government asking for what is known as (A) or (B) or (C) summary, as the case may be; but in any event the final report either in the form of a charge-sheet or in the form of a report asking for a particular type of summary has to be submitted by the Investigating Officer. In the instant case, what has been done is that at the end of the investigation only the charge-sheet was filed as regards accused No.1 and no summary appears to have been asked for so far as accused Nos. 2 to 7 were concerned. The scheme of the sections of the Cr.P.C. makes it clear that the judiciary, viz., the Magistrate concerned with the case, should be kept informed about the commencement of the investigation and also about the completion of the investigation. As the above mentioned Full Bench decision

> ***points out, the Magistrate to whom the final report is made under sec.173 is not bound to accept the opinion of the Public Officer regarding the non-commission of the offence by the accused in question. It is open to the Magistrate to take cognizance of the offence himself under sec.190 Cr.P.C. or to call for further report from the Investigating Officer; but the final word in such cases rests not with the Investigating Officer but with the Magistrate. Overlooking the provisions of sec.173 Cr.P.C. arid disregarding the provisions of the Police Manual, no report asking for a particular type of summary regarding accused Nos.2 to 7 was ever filed by the Investigating Officer and no summary was asked for as regards accused Nos.2 to 7."***

8. In the instant case, what has been done is that at the end of the investigation, the charge-sheet has been filed as regards only one accused viz. Nilesh Chauhan and no summary has been asked for so far as other two accused persons viz. Subhash Savaliya and Deven Marvadi are concerned. Considering the various provisions of

the Criminal Procedure Code as well as the decision of the Division Bench of this Court in case of ***Adesing Bavabhai & Others*** (supra), it has incumbent on the part of the Investigating Officer to submit appropriate summary before the learned JMFC so far as other two accused persons are concerned. If they were of the opinion that no case is made out against them and they are not to be charge-sheeted, at that stage, if A or B or C summary report is submitted, the learned Magistrate is required to give an opportunity to the original complainant against the said report and thereafter the learned Magistrate is required to consider whether to accept the said summary report or not and at that stage also, the original complainant can object to the same and even pray for further investigation also. In the present case, the learned Magistrate straight way accepted the charge-sheet only qua accused – Nilesh Chauhan and even did not consider to call upon the Investigating Officer to submit the summary against two other accused persons viz. Subhash Savaliya and Deven Marvadi

and/or even did not ask why those two persons are dropped and/or not charge-sheeted and it appears that the learned Magistrate has mechanically accepted the charge-sheet only qua one accused. Under the circumstances, the action of the Investigating Officer in not charge-sheeting the other two accused persons and/or dropping them and/or even not submitting any summary against them requires to be quashed and set aside and if the Investigating Officer is of the opinion that after investigation they are not to be charge-sheeted and/or they are to be dropped then he is required to submit appropriate summary before the learned JMFC so that at that stage, the petitioner – original complainant can make his submissions against such report. Consequently, the impugned order passed by the learned Additional Sessions Judge, Gondal passed below Exh.15 in Criminal Case No.7 of 2007 dated 3.7.2007 by which the application of the petitioner for further investigation under section 173(8) of the Criminal Procedure Code is rejected also requires to be quashed and

set aside reserving liberty in favour of the petitioner – original complainant to pray for further investigation at the time of consideration of the summary report, which is to be submitted by the Investigating Officer as stated above.

9. For the reasons stated above, the petition succeeds in part. The action of the Investigating Officer of complaint being I CR No. 41 of 2006 registered at Lodhika Police Station in dropping / not charge-sheeting other two accused persons viz. Subhash Savaliya and Deven Marvadi is hereby quashed and set aside and if the Investigating Officer of the said FIR is of the opinion on the basis of the investigation that the aforesaid two persons viz. Subhash Savaliya and Deven Marvadi are to be dropped and/or not to be charge-sheeted, in that case, he is directed to submit appropriate summary before the learned JMFC, Gondal accordingly and the said exercise to be completed within a period of six weeks from

today and if any appropriate summary is submitted by the Investigating Officer with respect to the aforesaid two co-accused persons, the learned JMFC is directed to consider the same in accordance with the provisions of the Criminal Procedure Code, more particularly, Sections 169 to 173 of the Criminal Procedure Code i.e. to consider the said summary after giving an opportunity to the petitioner – original complainant and thereafter he is directed to take an appropriate decision as to whether to accept such a summary report or not. At that stage, it will also be open for the petitioner – original complainant even to request for further investigation and/or even to object to the said summary as per the provisions of the Criminal Procedure Code and the learned JMFC, Gondal is directed to consider the same without in any way being influenced by the order passed by the learned Additional Sessions Judge & Presiding Officer, Fast Track Court, Gondal passed below Exh.15 passed in Sessions Case No.7 of 2007 dated 3.7.2007. In view of the above, no

further order is required to be passed with respect to the order passed below Exh.15 passed in Sessions Case No.7 of 2007 by the learned Additional Sessions Judge & Presiding Officer, Fast Track Court, Gondal dated 3.7.2007. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

[M.R.Shah, J.]

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